

SUNSET EVALUATION REPORT
MOTOR VEHICLE INDUSTRY LICENSING
Chapter 437, Hawaii Revised Statutes

A Report to the Governor and the Legislature of the State of Hawaii

Submitted by the
Legislative Auditor of the State of Hawaii

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FOREWORD

Under the "Sunset Law," licensing boards and commissions and regulated programs are terminated at specified times unless they are reestablished by the Legislature. Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, scheduled for termination 38 occupational licensing programs over a six-year period. These programs are repealed unless they are specifically reestablished by the Legislature. In 1979, the Legislature assigned the Office of the Legislative Auditor responsibility for evaluating each program prior to its repeal.

This report evaluates the regulation of automobile sales under Chapter 437, Hawaii Revised Statutes. It presents our findings as to whether the program complies with the Sunset Law and whether there is a reasonable need to regulate automobile sales to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed.

We acknowledge the cooperation and assistance extended to our staff by the Motor Vehicle Industry Licensing Board, the Department of Commerce and Consumer Affairs, and other officials contacted during the course of our examination.

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State of Hawaii

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TABLE OF CONTENTS

<i>Chapter</i>		<i>Page</i>
1	INTRODUCTION	1
	Objective of the Evaluation	1
	Scope of the Evaluation	1
	Organization of the Report	2
	Framework for Evaluation	2
2	BACKGROUND	7
	Occupational Characteristics	7
	Statutory History	13
	Current Regulation	17
	Federal Requirements	24
3	EVALUATION OF THE REGULATION OF THE MOTOR VEHICLE INDUSTRY	27
	Summary of Findings	27
	The Need for Regulation	28
	No Need to Regulate Salespersons and Others	40
	Regulatory Operations	45
	Licensing	46
	Enforcement	55
	Recommendations	58
	Appendix: Responses of Affected Agencies	59

Chapter 1

INTRODUCTION

The Hawaii Regulatory Licensing Reform Act of 1977, or Sunset Law, repeals statutes concerning 38 occupational licensing programs over a six-year period. Each year, six to eight licensing statutes are scheduled to be repealed unless specifically reenacted by the Legislature.

In 1979, the Legislature amended the law to make the Legislative Auditor responsible for evaluating each licensing program prior to its repeal and to recommend to the Legislature whether the statute should be reenacted, modified, or permitted to expire as scheduled. In 1980, the Legislature further amended the law to require the Legislative Auditor to evaluate the effectiveness and efficiency of the licensing program, even if he determines that the program should not be reenacted.

Objective of the Evaluation

The objective of the evaluation is: To determine whether, in light of the policies set forth in the Sunset Law, the public interest is best served by reenactment, modification, or repeal of Chapter 437, Hawaii Revised Statutes.

Scope of the Evaluation

This report examines the history of the statute on the regulation of automobile sales and the public health, safety, or welfare that the statute was designed to protect. It then assesses the effectiveness of the statute in preventing public injury and the continuing need for the statute.

Chapter 2

BACKGROUND

Chapter 437, Hawaii Revised Statutes, regulates the motor vehicle industry in the State. Under the law, no person in Hawaii can "act as a motor vehicle dealer, motor vehicle salesperson, motor vehicle auction, motor vehicle auctioneer, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative" without a license. The motor vehicle industry has been regulated in Hawaii since 1939.

Occupational Characteristics

According to data provided by the Department of Commerce and Consumer Affairs, there are 1,282 licensed motor vehicle dealers, salespersons, brokers, manufacturers, factory branches and representatives, distributors, and distributor branches and representatives in the State.¹ Motor vehicle dealers and salespersons represent over 90 percent of the licensees.

The following is a brief history and description of the occupation.

History. It appears that the first automobile in Hawaii dates back to the late 1890s. The *Pacific Commercial Advertiser*, dated October 9, 1899, reported: "Hon. H. P. Baldwin's automobile, the first to be seen in the Islands, was given the first trial yesterday afternoon, and it was a very successful one. E. D. Tenney was in charge of the machine. . . . During the trip from his residence to King Street and

1. Hawaii, Department of Commerce and Consumer Affairs, *Geographic Report*, Honolulu, October 9, 1985.

out along Punahou Street the vehicle was tried . . . first at four miles, then at eight, and on Punahou Street at fourteen miles an hour."²

By the turn of the century, the number of automobiles in Hawaii began to grow steadily. A September 1900 issue of *Paradise of the Pacific* reported that "four automobiles of various makes have been traversing Honolulu's streets during the past six months and attract the attention of all passersby."³ In 1904, there were reportedly 18 automobiles in the Honolulu Thanksgiving parade. A year later, it was reported that there were 80 motor vehicles in the Territory. The first automobile fatality in Hawaii occurred in Aiea on June 4, 1906, when Louis Marks backed his car over a 20-foot embankment.⁴

The earliest automobile sales and service establishments in Hawaii began operation around 1903. The 1903-04 Honolulu city directory contained an advertisement by the Honolulu Automobile Machine Shop of 1116-18 Union Street for the assembly and repair of automobiles. Another advertisement for car sales was run by the Pioneer Motor Car Company as the agent for Olds Motor Works, Winton Motor Carriage Company, and Cadillac Automobile Company. A year later, Pioneer Motors reportedly relinquished its franchise to the Von Hamm-Young Co., Ltd. In July 1904, the company published Hawaii's first newspaper car advertisement—a three-column display showing a fashionably-dressed young lady next to an Oldsmobile.⁵

2. "Files Show H. P. Baldwin First Hawaii Car Owner," *Honolulu Advertiser*, June 21, 1948.

3. Robert C. Schmitt, "Automobile Ownership in Hawaii Before 1931: Dates and Data," *Hawaii Historical Review*, v. II, no. 10, January 1968, p. 427.

4. *Ibid.*

5. *Ibid.*

By 1910, there were 861 registered motor vehicles in Hawaii, and that figure increased to over 45,000 by 1930.⁶ In 1953, the number of registered cars jumped to 159,000, and there were nearly 250,000 motor vehicles by 1962.⁷ Today, the total number of motor vehicles registered in the State is over half a million (593,000).⁸ Nationwide, there were 8,000 motor vehicles in 1900. By 1983, there were nearly 160 million registered motor vehicles in the United States.⁹

Today, numerous businesses are involved in the manufacture, distribution, and sale of automobiles. These businesses constitute a multibillion dollar industry employing hundreds of thousands of individuals. In 1983, for example, American motor vehicle manufacturers operated 312 facilities in 35 states and employed 700,000 people.¹⁰ Nationwide, 26,000 new car dealers reported sales in excess of \$152 billion. These dealerships employed nearly 700,000 persons with a payroll of more than \$12 billion.¹¹ Locally, new car dealers generated \$706 million in sales in 1984 with each dealer averaging about \$15 million in sales.¹² Today, Hawaii's retail automobile sales industry represents about 3 percent of the State's total retail sales.¹³

6. *Ibid.*, p. 428.

7. "Whaddya Mean If? They Are!" *Honolulu Advertiser*, February 16, 1962.

8. Hawaii Automobile Dealers Association, *HADA '85*, Honolulu, 1985, p. 8.

9. Motor Vehicle Manufacturers Association of the United States, *MVMA Motor Vehicle Facts and Figures '84*, 1984, p. 19.

10. *Ibid.*, p. 59.

11. *Ibid.*, p. 71.

12. Hawaii Automobile Dealers Association, *HADA '85*, p. 8.

13. *Ibid.*

Description of occupation. Hawaii statutes require motor vehicle dealers and salespersons to be licensed. Additionally, motor vehicle auctions and auctioneers, manufacturers, factory branches and representatives, distributors, and distributor branches and representatives are also required to be licensed if they are in the business of selling or purchasing motor vehicles.

Motor vehicle dealers. Motor vehicle dealers are in the business of selling, purchasing, or exchanging motor vehicles. New motor vehicle dealers usually sell at wholesale or retail new motor vehicles or new and used motor vehicles. Used motor vehicle dealers sell only used vehicles. Dealers or managers of dealerships may work alone but usually employ some salespersons.

Motor vehicle dealers, once part of a booming growth industry, have recently fallen upon more difficult times. In 1947, when Americans were buying a record volume of cars, there was a total of over 45,000 motor vehicle dealers. By 1982, that total had slipped to approximately 21,000 domestic dealerships and another 4,000 imported car dealerships.¹⁴ In the intervening 35 years, roughly half of the American dealerships, mostly small, locally-owned enterprises, had gone out of business.

A fairly common misapprehension is that a motor vehicle dealer is part of the manufacturing company that makes the vehicles (e.g., General Motors Corporation, Ford Motor Company, Chrysler Corporation). However, this is not the case. A motor vehicle dealer is basically an independent contractor or franchiser. Most dealers hold franchise agreements—in effect, a private contract—with one or more companies whereby the dealers agree to purchase and sell certain lines of motor

14. Brock Yates, *The Decline and Fall of the American Automobile Industry*, 1st ed., New York, Empire Books, 1983, p. 217.

vehicles for the manufacturer. The dealers operate as franchised representatives of a manufacturer, but like the public, they must buy cars outright and attempt to resell the vehicles at a profit.

Under a franchise agreement, the manufacturer is obligated to provide the dealer with certain services. The dealer, on the other hand, must generally accept the cars the manufacturer delivers, regardless of quality or sales potential, and attempt to sell the vehicles for whatever profit possible. Once the vehicles are delivered to a dealer, the manufacturer is essentially no longer involved other than to guarantee the warranties covering the vehicles.

The National Automobile Dealers Association, with a national membership of about 20,000, is the major professional organization for new motor vehicle dealers.¹⁵ The local affiliate, the Hawaii Automobile Dealers Association, consists of approximately 47 members.¹⁶ The National Independent Automobile Dealers Association represents about 8,000 of the nation's 70,000 independent used car dealers.¹⁷

Motor vehicle salespersons. An estimated 157,000 persons worked as motor vehicle salespersons in 1980.¹⁸ The majority of these salespersons are employed by new car dealers. The remainder work for used car dealers. Although some dealers have only one or two salespersons, the majority have more. Some of the larger dealerships employ more than 50 salespersons.

15. Information provided by the National Automobile Dealers Association, McLean, Va., via telephone conversation on November 26, 1985.

16. Hawaii Automobile Dealers Association, *HADA '85*, p. 14.

17. "Dealer Groups Battle U.C. Rule," *Automotive News*, February 20, 1984.

18. U.S., Bureau of Labor Statistics, *Occupational Outlook Handbook, 1982-83*, Washington, D.C., Government Printing Office, April 1982, p. 239.

Motor vehicle salespersons are the link between dealers and the public. Although dealers are responsible for the overall management of the dealership, the salespersons solicit customers and actually make the car sales. When a customer comes to a dealer, the car buyer is usually greeted by a salesperson who is then responsible for determining which models interest the customer and showing these cars to the customer. The salesperson will point out the best selling features of the car, invite the customer to inspect and test drive the vehicle, and answer the customer's questions.

When a sale is ready to be closed, the salesperson will prepare a sales contract for the customer. The salesperson will also assist the customer in completing forms for the car registration and license. The salesperson may also help the customer to arrange financing and insurance for the car. Finally, the salesperson will set a delivery date for the car and answer any final questions the customer may have.

Successful motor vehicle salespersons often advance to assistant sales manager, sales manager, or general manager positions, or may eventually become a dealer or a partner. Many, however, choose to remain salespersons and enjoy the freedom of working for different dealerships and in different states or regions.

Other industry licensees. Under Chapter 437, motor vehicle manufacturers, their various field offices and representatives, and auctions and auctioneers are required to be licensed. A brief description of these licensees follows.

Manufacturers assemble and build new motor vehicles. Although there are no manufacturing plants in Hawaii, these manufacturers are still required to be licensed to do business in the State. There are currently eight motor vehicle manufacturers licensed in Hawaii. These include, for example, Ford Motor Company, General Motors Corporation, Nissan Motor Company, and Toyota Motor Corporation.

Factory branches and factory representatives are merely the field offices or agents of the manufacturer. Factory branches are field offices established and maintained by manufacturers to promote the sale of new motor vehicles to distributors or dealers. Factory representatives serve as field agents for a manufacturer and help to promote the sale of the manufacturer's new vehicles. These representatives also supervise and monitor the work of a manufacturer's franchised dealers. There are currently 4 factory branches and 13 factory representatives in the State.

Distributors sell or distribute new motor vehicles to dealers. In some cases, motor vehicle dealers obtain their vehicles directly from the manufacturer. In other cases, the manufacturer works through a distributor who distributes the manufacturer's vehicles to the dealers. There are currently 22 licensed distributors in the State. Distributor branches and representatives are the field offices or agents of a distributor. Distributor branches help to promote the sale or distribution of new motor vehicles to dealers. Distributor representatives help to supervise and facilitate the business affairs of franchised dealers. In Hawaii, there is currently 1 licensed distributor branch and 30 licensed distributor representatives.

Finally, motor vehicle auctions are business operations in which motor vehicles are sold through a bidding process at either a public or private sale. Motor vehicle auctioneers are merely the employees or agents of an auction. These auctioneers are the persons who actually solicit the bids for the motor vehicles. There are currently no licensed motor vehicle auctions or auctioneers in the State.

Statutory History

The motor vehicle industry has been regulated in Hawaii for over 45 years. Act 258 in 1939 mandated that "no person other than a salesman or dealer licensed

according to the provisions of this Act shall engage in the business of selling motor vehicles at retail within this Territory. . . ."¹⁹ The Act created a five-member Motor Vehicle Dealers' and Salesmen's Licensing Board for the City and County of Honolulu, similar three-member licensing boards for each of the other counties, and established licensing standards and requirements.

In recommending this legislation, the House Committee on Judiciary reported: "This Bill is drafted along the same lines as legislation which has been adopted in several states. . . . Its aim is to create a motor vehicle dealers' board which shall be responsible for the licensing of all automobile dealers and salesmen. . . . This legislation is considered necessary, both as a safeguard to the purchasing public and as a fair protection to honest dealers from unfair and dishonest competition."²⁰

Since 1939, the motor vehicle industry licensing law has been amended by a number of different acts. In general, these changes were intended to further protect the public, improve the quality of service of the motor vehicle industry, and clarify the administration of the law. A few of the more significant amendments are summarized below.

Act 171, SLH 1949, amended the law by requiring all licensed motor vehicle dealers to post a bond with the respective county treasurers. Dealers in the City and County of Honolulu were required to post a \$3,000 bond; bonds of \$1,000 were required of dealers in the other counties.

In its committee report, the House Committee on Judiciary wrote: "The purpose of this bill is to protect not only treasurer's office but all persons dealing

19. Section 2, Act 258, SLH 1939.

20. House Standing Committee Report No. 540 on Senate Bill No. 296, Regular Session of 1939.

with bonded dealers not only with respect to the validity of registration of title but also with the respect to fraud or misrepresentation in the conduct of the business."²¹

Act 302, SLH 1957, represented the first major, comprehensive revision to the 1939 law. Among other things, Act 302:

- . included within the motor vehicle licensing law all persons or organizations involved in the business of selling or purchasing motor vehicles;
- . provided greater protection to consumers through new requirements regarding delivery agreements, advertising, bonds, and financial responsibility;
- . clarified board procedures regarding the granting, revocation, and suspension of licenses; and
- . strengthened enforcement by increasing civil and criminal penalties.

The House Committee on Judiciary reported: "Your Committee believes that . . . the distance of these islands from the sources of motor vehicles . . . the differences between conditions prevailing on the mainland and those in these islands . . . and the difficulty which local purchasers of motor vehicles would encounter in attempting to enforce warranties or contractual provisions against mainland sellers not subject to license or regulation by this Territory, both justify and necessitate the legislation contemplated by this bill. . . ." ²²

Act 263, SLH 1969, required for the first time that motor vehicle manufacturers, factory branches and representatives, distributors, distributor

21. House Standing Committee Report No. 744 on Senate Bill No. 304, Regular Session of 1949.

22. House Standing Committee Report No. 621 on House Bill No. 873, Regular Session of 1957.

branches and representatives, auctions, and auctioneers be licensed and comply with the motor vehicle board regulations. Previously, only motor vehicle dealers, salespersons, brokers, and broker agents were regulated by the board. Act 263 also abolished the county boards and established in their place a single seven-member state board composed of three representatives from the motor vehicle industry and four public members.

According to the House Committee on Judiciary: "The objective of state legislation licensing automobile manufacturers and their field representatives is to change a situation of unbalanced power existing between them and their dealers. The manufacturer can afford to replace any particular dealer since no individual is essential to its success. Moreover, it has favors to grant and withhold. . . . The dealer, on the other hand, can seldom afford to lose his franchise. . . ." ²³

In 1974, Act 99 provided penalties for unlicensed persons in the State who engage in the business of selling or purchasing motor vehicles.

The Senate Committee on Consumer Protection stated: "Your Committee has received testimony to the effect that many consumers have been victimized by unscrupulous automobile dealers operating in the State without a license. . . . Without this legislation, the Board has been without jurisdiction over such operators. With this legislation, the Board will be able to act promptly upon consumer complaints involving unlicensed automobile dealers." ²⁴

More recently, Act 102, SLH 1985, increased the bond requirement for all new motor vehicle dealers, auctions, and brokers to \$200,000; raised the bond

23. House Standing Committee Report No. 588 on House Bill No. 477, Regular Session of 1969.

24. Senate Standing Committee Report No. 463-74 on House Bill No. 2177-74, Regular Session of 1974.

requirement to \$100,000 for used motor vehicle dealers selling more than 25 motor vehicles a month (dealers selling 25 or fewer motor vehicles a month must post bonds of \$25,000); required a \$5,000 bond for dealers selling only motorcycles or motor scooters; and required all licensees to maintain their bond amounts or be subject to automatic suspension of their licenses.

In supporting the legislation, the House Committee on Consumer Protection and Commerce stated: "The bonding requirements are definitely inadequate and an embarrassment to the State when the consuming public experiences personal financial losses far in excess of the bond amount. The Department also testified that this bill proposes to provide for automatic suspension . . . to prevent a licensee from continuing to engage in the business after the expiration or cancellation of a bond, the rationale being that the consuming public will be minimally exposed to potential losses."²⁵

Current Regulation

Motor Vehicle Industry Licensing Board. Under Chapter 437, the motor vehicle industry is regulated by a seven-member Motor Vehicle Industry Licensing Board appointed by the Governor and placed for administrative purposes in the Department of Commerce and Consumer Affairs. The department provides staff support to the board.

The law requires the board to have three members involved in the motor vehicle industry and four public members who have no connection with the industry. Chapter 437 empowers the board to formulate rules; establish minimum licensing

25. House Standing Committee Report No. 133 on House Bill No. 230, Regular Session of 1985.

requirements; grant, deny, suspend, or revoke licenses; and investigate violations and hear complaints.

Licensing requirements. Applicants for a motor vehicle industry license do not have to meet any special educational or training requirements. However, all applicants for licensure must meet the following general requirements:

- . file an application with the board;
- . pay the required application/licensing fees;
- . post the required bond amount;
- . undergo a background investigation; and
- . complete a board interview (at the discretion of the board).

In addition to these general requirements, an applicant must meet other requirements for each of the different types of licenses issued by the board. These licenses and applicant requirements include:

Salesman license

- . provide an affidavit from a licensed dealer certifying that the applicant is employed and under the supervision of the dealer.

Dealer or auction license

- . furnish appropriate financial statements/information that have been certified by a public accountant or certified public accountant or verified by the applicant under oath;
- . undergo a background investigation that includes information regarding the applicant's work premises and equipment, past business history (if previously licensed), and the applicant's proper authorization to sell or distribute new motor vehicles;

- . ensure the availability of a site that will be used primarily to sell motor vehicles with the site to include a permanent building suitable for displaying at least three motor vehicles (this requirement may be waived for used car dealers); and
- . undergo a thorough inspection of the proposed business premises.

Manufacturer, factory branch or representative, distributor, or distributor branch or representative license

- . submit a police report covering the last five years for an individual, each partner of a partnership, and for a corporation, each officer of the division involved in the manufacture and/or distribution of motor vehicles, and each principal officer (president, vice president, secretary, and treasurer) of the corporation itself.

The law requires every licensee to pay by June 30 of each even-numbered year a fee to the board for the biennial renewal of the license. A person holding an expired license may have the license restored after proper reapplication and after payment of any penalty and filing fees. Generally, any license issued by the board is terminated when the business or establishment closes. The law requires that a terminated, suspended, or revoked license be delivered by the holder to the board.

If a licensed salesperson or auctioneer wishes to change employers, the salesperson or auctioneer must apply to the board for an amended license. Likewise, a licensee wishing to move or change premises or add branch offices must obtain an amended license authorizing the change. Except under certain circumstances, the executive secretary is authorized to issue these amended licenses subject to the ratification of the board. Unless good cause exists, these amended licenses are to be issued freely to licensees for the remainder of the original term of the license.

The law stipulates that no license is transferable. Additionally, each dealer is required to post the license or a certified copy of the license in a conspicuous place on the dealer's premises. A salesperson is required to carry a license while transacting any business and must produce the license if requested to do so by a customer. The law further requires the licensee to inform the board of any changes in the status of a license within 15 days.

Bonding requirements. Chapter 437 requires each licensed new motor vehicle dealer and broker to maintain a \$200,000 bond. A licensed used motor vehicle dealer must maintain a bond of \$100,000. However, a \$25,000 bond may be maintained by a used motor vehicle dealer selling 25 or fewer vehicles a month. The law stipulates that if the market value of a dealer's business establishment is equal to or greater than 90 percent of the dealer's required bond, and the dealer's financial condition is sound, the board may, at its discretion, reduce the amount of the dealer's bond. A licensed dealer selling only motorcycles and motor scooters must maintain a \$5,000 bond.

Motor vehicle salespersons or auctioneers must maintain a \$2,500 bond. The bond for an auction is \$200,000, the same as that required for a new motor vehicle dealer. The law also requires each manufacturer, factory branch or representative, distributor, or distributor branch or representative engaged in the business of manufacturing, distributing, or selling new motor vehicles in the State to furnish and maintain a \$100,000 bond.

A factory branch or representative, distributor, or distributor branch or representative need not provide separate bonds if the manufacturer or distributor they represent have already filed the required bond and if they are named as principals in the bond. Additionally, if any of these licensees deals exclusively with motorcycles or motor scooters and if they are not named as a principal by the

manufacturer or distributor they represent, they may maintain only a \$10,000 bond. The law requires each licensee to maintain the stipulated bond amount or be subject to automatic licensure suspension effective on the date the bond expired or was cancelled.

Advertising. Chapter 437 contains detailed and specific requirements regarding the advertising of new or used motor vehicles. The chapter, for example, prohibits motor vehicle dealers from advertising the sale or exchange of any motor vehicle not actually for sale at the dealer's premises or available to the dealer from the manufacturer or authorized distributor at the time of the advertisement. Also prohibited are false advertising, use of the term "wholesale" in retail automobile advertising, and advertising for the sale of a "new" motor vehicle unless the vehicle conforms to the statutory definition of "new motor vehicle."

The law prohibits a dealer from advertising the sale of a specific motor vehicle without listing the year and make of the vehicle, and, in the case of a used car, the license plate number. A motor vehicle dealer is also required to retain a copy of the retail sales contract or bill of sale for any motor vehicle which was advertised and sold. The chapter further prohibits a motor vehicle dealer from advertising the price of a vehicle unless the advertisement also includes the car's make, body type, manufacturer's classification or series (except for used cars), and whether other charges in addition to the quoted price will be assessed.

Chapter 437 requires dealers or salespersons to obtain board authorization prior to displaying motor vehicles for advertising purposes at any site other than the dealer's licensed premises. Finally, a salesperson is prohibited from advertising the sale of a motor vehicle without designating the name of the salesperson's employer unless the motor vehicle being advertised is registered under the salesperson's name.

Suspension, revocation, and denial of license. Under Chapter 437, the board, after proper notice and hearing, may fine a licensee or suspend, revoke, or deny the issuance or renewal of any license issued under the chapter. The board may take such action if a licensee commits any one of the nearly two dozen violations specifically listed under Chapter 437. These violations range from falsifying a license application to employing sales people who are not duly licensed under the chapter.

If the board or the director of the department finds that a licensee is engaged in activities which involve an immediate and unreasonable threat to personal safety or fraud or misrepresentation, the board or the director may order the summary suspension of the license for a maximum five-day period, pending a hearing by the board on the charges. Any attempt by the licensee to continue doing business during the suspension period may warrant a permanent revocation of the license.

The board has the discretionary authority to issue or reissue a license to an individual who has violated any of the provisions of the chapter. Such board action, however, remains contingent upon the individual's willingness to post an additional bond, a determination by the board that there were extenuating circumstances regarding the violation, the length of time that has transpired since the offense, evidence indicating that the person is unlikely to repeat the offense, and the interest and safety of the public.

The law stipulates that any person wishing to appeal a final decision and order by the board in a contested case is entitled to a judicial review by the appropriate circuit court. The review must follow the guidelines outlined in Chapter 91, HRS (the Administrative Procedure Act), and be conducted by the court without a jury. The board is required to retain a record of the hearings or proceedings in these

contested cases. The Department of the Attorney General is responsible for serving as counsel for the board.

Enforcement/penalties. Any person who violates any provisions of the chapter or the board rules or who engages in the business of selling or purchasing motor vehicles in the State without a license can be fined up to \$1,000 or imprisoned for up to one year.

The law stipulates that the board or any person may file suit to enjoin a person from operating without a license and to recover any losses incurred. If the court finds that the defendant has violated or is violating the law, it may enjoin the defendant from doing any further business. The chapter also authorizes the board to seek injunctive relief from the circuit court to enjoin any licensee who is violating the law.

Miscellaneous requirements. Chapter 437 prohibits a motor vehicle dealer from advertising or selling a motor vehicle unless the dealer possesses the legal ownership certificate for the vehicle. A dealer is also required to comply with existing provisions regarding the legal transfer of ownership certificates and certificates of registration.

The chapter stipulates that when a licensee represents a buyer in the State and seeks to purchase a motor vehicle through a nonresident dealer or broker (one not licensed in Hawaii), the licensee must meet certain requirements including the filing of monthly statements with the board showing the name and address of all such nonresidents. In such transactions, the licensee must also provide the buyer with a copy of the contract or agreement.

Under Chapter 437, every licensee may be held responsible for the conduct of the licensee's agents or employees in all transactions that fall within the board's

jurisdiction. The law also requires every motor vehicle dealer to keep a record of all purchases, consignments, sales, exchanges, and other transactions involving the dealer's motor vehicles. This record is subject to inspection at any time by the board or by an official designee of the board.

Chapter 437 also prohibits any person engaged in the retail business of selling motor vehicles from entering into any kind of contract or agreement with a manufacturer or distributor that requires the person to sell or not to sell vehicles to a certain individual or class of individuals. The law further prohibits any manufacturer or distributor from coercing dealers to violate this provision.

Finally, under the law, if a new motor vehicle does not conform to all applicable express warranties and the consumer reports this in writing to the manufacturer or its authorized agent during the term of the warranty, the manufacturer or its agent must make all necessary repairs covered by the warranty even if the warranty has expired. If the defect in the motor vehicle cannot be corrected or repaired after a reasonable number of documented attempts and if the defect substantially impairs the use and market value of the vehicle, the manufacturer may be required to replace the motor vehicle or accept return of the vehicle and provide a refund to the consumer.²⁶

Federal Requirements

In addition to Chapter 437, motor vehicle industry licensees in Hawaii must comply with a variety of federal requirements. These requirements originate from several federal laws:

26. This statute (Section 490:2-313.1, HRS) is commonly referred to as the "lemon law;" Act 161, SLH 1985, removed the section from Chapter 437 and placed it under Chapter 490, the Uniform Commercial Code.

1. The Dealers Day in Court Act/Automobile Dealers Franchise Act supplements federal antitrust laws by enabling franchised motor vehicle dealers to file suit in federal district court to recover compensatory damages from a manufacturer who fails to comply with the terms of a franchise agreement. The law prohibits a manufacturer from unfairly terminating or failing to renew a dealer's franchise. Additionally, manufacturers are prohibited from coercing, threatening to coerce, or intimidating their franchise dealers.

2. The Automobile Information Disclosure Act requires the full and fair disclosure of certain information for all new motor vehicles distributed or sold in the United States. This law requires every manufacturer or importer of new motor vehicles to affix a label to the windshield or window of the vehicle, prior to delivery to a dealer, containing the following information: the make, model, and serial or identification number of the vehicle; the vehicle's final assembly point; the name and location of the dealer and the town to which the vehicle is to be delivered; the total manufacturer's suggested retail price; the suggested price of optional equipment; and the dealer's transportation charges.

3. The Motor Vehicle Information and Cost Savings Act requires motor vehicle manufacturers to design and promote safer motor vehicles. This law requires the Secretary of Transportation to set standards for manufacturers to build cars that are more resistant to damage and less expensive to repair if damaged. It also requires the federal government to give consumers information regarding the damageability, crashworthiness, and repairability of new motor vehicles. Finally, the law mandates a national policy prohibiting the disconnecting or setting back of automobile odometers.

Chapter 3

EVALUATION OF THE REGULATION OF THE MOTOR VEHICLE INDUSTRY

This chapter contains our evaluation of the regulation of the motor vehicle industry under Chapter 437, Hawaii Revised Statutes, including our evaluation of the need for regulation and existing regulatory operations. We conclude this report with our recommendations.

Summary of Findings

Our findings are as follows:

1. Continued licensing of motor vehicle dealers and auctions is necessary to safeguard the safety and welfare of the public. Without regulation, the public would be exposed to potentially unscrupulous, fraudulent, and deceptive industry practices.
2. Motor vehicle salespersons, auctioneers, manufacturers, factory branches and representatives, distributors, and distributor branches and representatives pose no significant threat to the public health, safety, or welfare, and licensing of these individuals should be eliminated.
3. There is a discrepancy between the licensing requirements in Chapter 437 and those requirements which applicants for a motor vehicle dealer's license are actually being required to meet. To avoid confusion and to prevent any possible legal challenges, the board should clarify these licensing requirements in its rules.
4. There are several restrictive provisions in Chapter 437 which should be eliminated. Among these are provisions prohibiting licensees from doing business outside the county for which the license was issued, requiring motor vehicle

salespersons to be employed full time and work for only one motor vehicle dealer, and prohibiting motor vehicle brokers from competing directly with new motor vehicle dealers by selling new cars.

5. Allowing car rental companies to sell motor vehicles to the public without a license and the practice of manufacturers to give "subsidies" to fleet purchasers remain a major source of controversy within the industry. Given the limited experience of only a very few states and the absence of documented consumer harm, we see no compelling reason for any immediate state action in this area.

6. With the enactment of Act 204 in 1982, the board's authority to receive and investigate complaints was delegated to the Regulated Industries Complaints Office (RICO) of the Department of Commerce and Consumer Affairs (DCCA). However, Chapter 437 still contains statutory language authorizing the board to investigate complaints. The chapter should be amended to reflect the mandates of Act 204, SLH 1982.

The Need for Regulation

Under Chapter 437, motor vehicle dealers, salespersons, auctions and auctioneers, manufacturers, factory branches and representatives, distributors, and distributor branches and representatives must be licensed by the State to engage in the business of selling motor vehicles.

We find that continued licensing of motor vehicle *dealers and auctions* is necessary to protect the public from fraudulent, deceptive, and unsafe industry practices. We also find, however, that licensure is unnecessary for motor vehicle salespersons, auctioneers, manufacturers, factory branches and representatives, distributors, and distributor branches and representatives.

Need to license dealers. We believe that continued regulation of motor vehicle dealers is justified because there exists a significant risk to the safety of a large segment of the public when unscrupulous dealers sell defective and potentially unsafe motor vehicles to consumers. Additionally, the public welfare is jeopardized when dealers use fraudulent and deceptive practices to sell motor vehicles and when such practices result in economic losses by the general public.

The purchase and use of motor vehicles for both work and recreational purposes have become an integral part of American culture. A large number of individuals purchase motor vehicles annually, and a very high percentage of the public either own or have ready access to motor vehicles.

Nationwide, retail sales of passenger cars in 1983 totaled 9.2 million units (6.8 million domestic cars and 2.4 million imports). Locally, a record 62,695 units were sold in Hawaii in 1984, and sales totaled over \$700 million. There were nearly 600,000 motor vehicles registered in the State in 1984.¹

New car dealers. Next to a home, buying a new automobile probably represents the most costly purchase many consumers will ever make. According to the Motor Vehicle Manufacturers Association of the United States, the average cost of a new car in 1983 exceeded \$10,000 for the first time (domestic cars averaged \$10,481 and imports cost \$10,660).² The average selling price of a new car in Hawaii last year was over \$11,000.³ Consequently, any problem related to the purchase of a new car can result in serious economic consequences for buyers.

1. Hawaii Automobile Dealers Association, *HADA '85*, Honolulu, 1985, pp. 4-8.

2. Motor Vehicle Manufacturers Association of the United States, *MVMA Motor Vehicle Facts & Figures '84*, 1984, p. 8.

3. Hawaii Automobile Dealers Association, *HADA '85*, p. 8.

The highly competitive nature of the motor vehicle industry has led to numerous instances of high-pressure sales, misleading and deceptive advertising, fraudulent and unethical business practices, and occasionally, almost total disregard for the rights and welfare of consumers.

The unwary buyer, and even the informed and cautious consumer, too often remains at a distinct disadvantage in these transactions. Examples of motor vehicle dealers in America using unscrupulous and unethical business practices to sell vehicles are numerous and well documented. In Maryland, for example, the Office of Consumer Affairs took legal action against a new car dealer who reportedly charged customers exorbitant dealer fees by using nonitemized dealer preparation charges. Other dealers were taken to court for delaying delivery of new cars until buyers paid an additional charge (up to \$400) over the agreed sales price.⁴

Because of similar problems in New York, an agreement was obtained by the State Attorney General which requires dealers to inform buyers that some dealer preparation charges are optional and to itemize these charges. In Los Angeles, the District Attorney won a \$350,000 judgment against a new car dealer found guilty of 39 separate unlawful practices including bait-and-switch advertising and overcharging customers for dealer preparation costs. The court also ordered the dealer to refund \$50,000 in vehicle registration fees that had been collected from customers and kept by the dealer.⁵

Locally, an examination of motor vehicle industry complaints filed with RICO provides additional justification for continued regulation of motor vehicle dealers.

4. "Dealing with the Dealers," *Consumer Reports*, v. 44, no. 4, April 1979, p. 202.

5. *Ibid.*

Traditionally, the motor vehicle industry receives more complaints annually than all but 3 or 4 of the 30 or more professions or occupations regulated by DCCA. In the last three years, for example, almost 600 motor vehicle industry complaints were filed officially with RICO. These include 203 complaints filed in 1983, 227 in 1984, and 127 in 1985 (as of October 31, 1985).⁶

The vast majority of these complaints were filed by consumers against motor vehicle dealers. Although these complaints include a wide range of consumer problems, most of the complaints fall into the following categories: misrepresentation, repair and warranty problems, deceptive and fraudulent business practices, and misleading advertising. There were also complaints concerning unlicensed activity and legal ownership/registration problems.

Four sample cases are presented to illustrate some of the more typical consumer abuses in this area. The first case concerns a military couple who tried to get their car properly repaired under a new car warranty. After arriving in Honolulu, the couple took their car numerous times to a dealer, but it was never properly repaired. Finally, the car's transmission burned out, and the car was towed to the dealer's repair garage.

Although the car's warranty had expired, the couple insisted that the transmission be repaired at the dealer's expense since they had complained about the transmission problem before the warranty expired, and it had never been properly repaired. The dealer refused and insisted that the couple had not taken proper care of the car. Through the intervention of the State, a settlement was finally reached, and the dealer agreed to purchase the car back.

6. Hawaii, Department of Commerce and Consumer Affairs, *Regulated Industries Complaints Office—Master Log for 1983, 1984, and 1985*.

In the second case, the complainant went to a dealership to purchase a new truck. The complainant had placed a downpayment of over \$6,000. He was informed, however, that a special order would have to be placed since the type of truck desired was not on the lot. The dealership promised delivery within 90 days.

After the 90 days passed, the dealer informed the complainant that the truck had not arrived but assured him that it would be arriving shortly. After four months, the truck had still not been delivered. At this point, the complainant sought a refund, but the dealership refused. RICO was eventually able to settle the dispute by having the contract cancelled and the deposit refunded to the complainant.

The third case involves a consumer who agreed to purchase a new car on the condition that the car be equipped with a certain type of transmission. The consumer, who was assured by one of the salespersons and also a mechanic from the repair department that the car had the right transmission, deposited a \$200 check as downpayment for the car. A few days later, he paid the balance of the contract price. A couple of months after purchasing the car, the consumer discovered that the car was equipped with the wrong kind of transmission. The consumer was forced to purchase the proper transmission with his own money. The case was eventually settled when the consumer was compensated \$700.

The last case involves a consumer who purchased a new car from a dealer. Included in the sales contract was a \$35 fee for registering the vehicle with the Director of Finance of the City and County of Honolulu. However, the dealer knowingly failed to give notice of the sale/transfer of the vehicle to the Director of Finance as required by law and failed to submit the certificate of ownership within the required 20 days. In fact, the certificate was not submitted until about two months after the date of the sale. The consumer, unaware of this, encountered numerous problems because the car was being operated with an expired temporary

registration and safety check sticker. The consumer's wife was cited by the police for these two violations. The dealer was eventually fined \$1,000 by the board.

Used car dealers. The increased cost of new cars has resulted in car owners keeping their vehicles for longer periods of time and more consumers entering the used car market. According to the Motor Vehicle Manufacturers Association of the United States, the mean age of American cars in 1983 was 7.4 years. An annual Hertz Corporation survey shows that two out of every three cars sold nationwide are used cars. According to their data, 17.4 million used cars were sold in the United States in 1983 as opposed to 8.8 million new cars.⁷

American drivers pay billions of dollars annually to buy used cars. The average used car costs about \$5,000, is approximately five-years-old, and has been driven about 50,000 miles. Economics seems to be the primary reason why more people are buying used cars. These cars are less expensive to purchase and less costly to operate. For example, a new compact car driven four years with about 10,000 miles per year costs about 44.7 cents a mile to operate. However, a similar used car under the same conditions costs about 25.4 cents a mile to operate.⁸

Despite the large number of used cars on the highways and the growing number of consumers purchasing used cars, the general record for used motor vehicle dealers is no better than that of new motor vehicle dealers—in some ways, it may be worse.

A final staff report to the Federal Trade Commission (FTC) regarding the sale of used motor vehicles reports:

7. "Used Cars Still a Gamble Despite New FTC Rule," *Honolulu Star-Bulletin*, June 2, 1985.

8. *Ibid.*

"Examination of the record clearly shows that used motor vehicle sales by dealers cause substantial consumer harm through a variety of . . . unfair or deceptive acts or practices. . . . Record information establishes the sale of defective used motor vehicles as a major consumer abuse. Dealers, either directly or through their employees and agents (mechanics, appraisers, buyers and salesmen) learn the conditions of the vehicles they obtain. Although many dealers diligently repair the defects uncovered or wholesale the defective vehicle, great numbers of defective vehicles are retailed. The defects are highly material, affecting the basic safety or utility of the most expensive item many consumers will ever buy."⁹

The staff report to the FTC goes on to make several other points which provide further justification for continued regulation. *First*, consumers generally lack the mechanical or technical expertise to determine whether defects exist and the severity of the defects in cars being offered for sale. Consumers often use a vehicle's general appearance as a guide to the car's mechanical soundness. Consequently, dealers will spend more time reconditioning the appearance of the vehicles rather than working on necessary mechanical repairs. Dealers will also misrepresent or neglect to disclose the existence of known defects. The consequences are that dealers are selling motor vehicles with known defects, and consumers are unwittingly purchasing defective and unsafe vehicles.

Second, it appears that many consumers are unaware when they purchase a used vehicle whether, and to what extent, their vehicles have warranties. Many car buyers do not understand the legal significance of an "as is" clause and are often ignorant regarding the terms and limitations of dealer warranties. A typical sale often involves oral promises that post-sale repairs will be made, a sales contract with an "as is" clause, and a subsequent refusal by the dealer to make any repairs. The harm to the consumer in this situation is obvious. After making a costly

9. Federal Trade Commission, *Sale of Used Motor Vehicles, Final Staff Report to the Federal Trade Commission & Proposed Trade Regulation Rule (16 CFR 455)*, Washington, D.C., 1978, p. 6.

investment in a car which has been "guaranteed" to be in good working condition, the consumer ends up paying for extensive and costly repairs.

Third, consumers too often are unaware of any major prior repairs that have been made to vehicles offered for sale. Many dealers routinely perform "appearance reconditioning" on used cars before reselling them. Occasionally, however, major repair work is done on a vehicle. The problem arises when dealers refuse to discuss or disclose these prior repairs to potential buyers. Unless a consumer has the mechanical expertise or takes the time to have the vehicle inspected by a mechanic, the consumer must rely on the oral assurances of the salespersons that the car is in good working condition and has not undergone any major repairs.

Fourth, another problem facing used car buyers is the reluctance of dealers to disclose the number of previous owners and the type of use the vehicle has had—e.g., private owner, rental car, commercial-use car, etc. Information regarding a vehicle's prior use would be valuable to a consumer. Consumers generally seem to prefer privately-used cars and are reluctant to purchase government and commercial-use vehicles. The problem for consumers, however, is that the dealer need not disclose the prior use history of a vehicle. Dealers, in fact, can easily feign ignorance in this area. Once again, the consumer must rely upon the oral assurances of the dealership.

Finally, consumers must be wary of the practice of odometer "spin-backs," a practice which seems to be gaining renewed popularity, especially on the mainland. Unfortunately, such practices are difficult to detect. Under the U.S. Motor Vehicle Information Act, odometer spin-backs are prohibited (tampering with motor vehicle odometers is also prohibited under Section 292-7, HRS). Lease or fleet cars driven by such high-mileage travelers as salespersons and government officials appear to be a popular target for spin-back artists, because these late model high-mileage cars gain the most in value from spin-backs.

According to an official from the National Highway Traffic Safety Administration (NHTSA), if a used car's mileage has been lowered because of an odometer "rollback," its buyer is defrauded by at least 2.4 cents for each mile erased. Consequently, if a used car's odometer has been spun back 50,000 miles, a not unusual figure, the buyer is cheated out of \$1,200. The NHTSA official estimates that the mileage of possibly three million cars sold annually from "fleets" have been tampered with.¹⁰

In the mid-1970s, the FTC began investigating the used car industry because complaints about motor vehicles comprised the largest category of consumer complaints. In 1976, Congress ordered the agency to write a rule governing used car sales. After numerous hearings, the FTC concluded that consumer abuse by used car dealers was commonplace and pushed for strong regulation of the industry. The FTC proposed a rule which would have required dealers to inspect their cars and affix to each car a list of known mechanical defects. Unfortunately, the rule was never implemented in its original form.

After nearly a decade of controversy, a weaker law finally took effect on May 9, 1985. Yielding to strong pressure from automobile dealer organizations, Congress omitted the requirement that dealers list known defects. The new FTC rule requires dealers to provide the following information on a window sticker: (1) the terms of any warranty offered; (2) a statement whether the car is being sold on an "as is" basis; (3) a suggestion that the consumer ask for an independent inspection of the car; and (4) a warning that oral promises are difficult to enforce.

In Hawaii, the need to regulate used car dealers is reinforced by cases which have received notoriety from time to time. One of the most publicized cases

10. "Odometer-Spinning Back in Fashion," *Honolulu Star-Bulletin & Advertiser*, June 23, 1985.

occurred two years ago and involved two persons who operated both a used car dealership and a motor vehicle auction. The complaints against the two included charges by some customers that they never received their money after their cars were sold, ownership papers were never transferred, unlicensed salespersons were selling cars, cars were sold without having possession of the legal ownership certificate, and vehicles were sold with the knowledge that legal ownership papers could not be transferred within the time required by law.¹¹

More than 40 complaints were filed with RICO against the two persons. In January 1983, the two principals filed for bankruptcy listing debts totaling \$450,000, and RICO took action to revoke their license. However, the two fled the State and left dozens of consumers facing monetary losses totaling tens of thousands of dollars.¹² Because the complaints included transactions which took place at auctions, where unsuspecting buyers and sellers believed that they were engaged in *bona fide* deals, auctions—like used car dealers—should continue to be licensed.

Motorcycle dealers. Under the law, motorcycle dealers are considered motor vehicle dealers and are required to be licensed. Their licensing requirements are generally similar to those for automobile dealers. However, the required bond for a motorcycle dealer is only \$5,000 (compared with a \$200,000 bond for a new car dealer and a \$100,000 bond for a used car dealer). There are currently 17 licensed motorcycle dealers in the State.

We believe that continued licensing of motorcycle dealers is necessary. Like motor vehicle dealers, motorcycle dealers sell vehicles directly to the public. Some

11. "Auto Auction Told to Watch Its Ethics," *Honolulu Star-Bulletin*, January 28, 1983.

12. "Two Car Dealerships File for Bankruptcy," *Honolulu Advertiser*, February 1, 1983.

of these dealers have engaged in unscrupulous and fraudulent business practices that clearly resulted in consumer harm. Our examination of RICO complaint files indicates that consumers have filed a variety of complaints against motorcycle dealers. These include cases of misrepresentation, deception and fraud, and repair/warranty problems. If motorcycle dealers are not licensed, it is likely that the public would be exposed to an even greater threat of harm.

Two sample cases are presented to illustrate some of the typical consumer abuses in this area. The first case involved a man who purchased a new motorcycle but was unable to obtain the legal ownership certificate from the motorcycle dealer. After investigating the case, RICO learned that the dealer allegedly sold the motorcycle without possessing the required legal ownership papers; failed to give immediate notice of the sale/transfer to the Director of Finance; in an attempt to obtain a legal ownership certificate, engaged in improper business conduct by fraudulently reporting that the motorcycle had been abandoned; and engaged in motor vehicle repairs without a license. Prior to the scheduled administrative hearing, a settlement was reached with the dealer. The motorcycle dealer was fined \$2,500.

In the second case, a man purchased a motorcycle for about \$2,000 from a local motorcycle dealer. The man began to experience numerous problems with it. Apparently, the major problem was a defective carburetor. The motorcycle was returned to the dealer on numerous occasions, but the defective carburetor was never properly repaired. After filing a complaint with RICO, the man also initiated legal action in Small Claims Court. The dealer eventually worked out a settlement with the man, and the RICO complaint was withdrawn.

If Chapter 437 were repealed, motor vehicle dealers would continue to fall under a certain degree of regulation, and consumers would be afforded some

protection under existing state statutes relating to antitrust, consumer protection, and deceptive trade practices. Federal laws such as the Dealers Day in Court Act/Automobile Dealers Franchise Act, Automobile Information Disclosure Act would also provide some protection. However, the regulation would be piecemeal and greatly diffused. Current consumer safeguards would be significantly weakened. Without Chapter 437, the general public would be left with no single state or federal regulatory body to protect their interests.

Summary. In summary, we believe that licensing of motor vehicle dealers and auctions must be continued to safeguard the safety and welfare of the public. Factors which justify this need for continued regulation include:

- . the almost universal ownership of motor vehicles in the State;
- . the large volume of sales annually of both new and used motor vehicles;
- . the large monetary investment involved in purchasing a motor vehicle;
- . the buying public's general lack of mechanical and technical knowledge or expertise in this area;
- . the potential dangers involved in buying defective and unsafe motor vehicles;
- . the consumer's lack of sophistication regarding their legal rights and obligations in these types of transactions;
- . the extremely competitive nature of an industry which too often employs unscrupulous, unethical, and fraudulent business practices;
- . the very poor track record of the industry as evidenced by the extremely high volume of complaints generated by licensees; and
- . the absence of a single state or federal regulatory body to advocate and protect the interests of the consuming public in the event of deregulation.

No Need to Regulate Salespersons and Others

Under Chapter 437, motor vehicle salespersons, auctioneers, manufacturers, factory branches and representatives, distributors, and distributor branches and representatives are also required to be licensed to do business in the State. We find that these licensees pose no significant threat to the public health, safety, or welfare. Consequently, we believe that mandated licensing for these categories should be eliminated.

Salespersons. Motor vehicle salespersons have been licensed in Hawaii since 1939, when the Motor Vehicle Industry Act was first enacted. Salespersons applying for a license must provide the board with an affidavit certifying that they are employed by and under the supervision of a licensed dealer. At the same time, the law stipulates that licensed dealers "may be held responsible for the conduct of his agents and employees in all transactions regarding motor vehicles, motor vehicle parts, franchises, and transactions involving a subject matter within the jurisdiction of the board."¹³

Motor vehicle salespersons serve as employees and agents of licensed motor vehicle dealers. These dealers are responsible for supervising these employees and are accountable for the business conduct and actions of their employees. Under general tort laws, employers are liable for any wrongful acts of their employees.

Requiring salespersons to be licensed merely perpetuates a duplicative, unnecessary, and inefficient regulatory system. Licensing salespersons may also provide a tempting loophole which allows dealers to shirk their responsibility as employers to properly screen and hire employees and to adequately supervise these workers. This responsibility most appropriately falls within the purview of the individual motor vehicle dealer and not the State.

13. Section 437-15, HRS.

A sunset performance audit from Indiana provides some relevant thoughts on this issue. The report states: "Many licensed practitioners work as employees of business firms or for other professionals. For many employers, market-generated incentives are sufficient to assure that only qualified individuals will be hired; when this is the case, there is no reason for government to require that firms hire only persons who have been licensed by the state. In other cases, the accountability of the employer established through governmental regulation similarly eliminates the necessity of requiring that only licensed individuals can be hired."¹⁴

There are currently 1,282 motor vehicle industry licensees. Of this total, 1,077 or 84 percent of the licensees are salespersons.¹⁵ Despite the fact that they constitute a vast majority of the licensees, our review of complaints filed with RICO indicates that only a very small percentage of the total number of complaints have been filed against salespersons. Of the nearly 600 motor vehicle industry complaints filed with RICO in the last three years, less than two dozen were filed specifically against salespersons.

There may be several reasons for this. *First*, motor vehicle salespersons could be well supervised and conducting their business properly within the parameters of the law. *Second*, salespersons could be committing a number of transgressions, but these problems are being successfully handled and resolved at the dealership level. *Third*, consumers may be experiencing a number of problems with salespersons but choose, when filing an official RICO complaint, to target the dealership, the salesperson's employer, as the official respondent in the case.

14. Indiana, Legislative Services Agency, *Sunset Performance Audit of Occupational Regulatory Programs in Indiana*, December 1979, p. 47.

15. Hawaii, Department of Commerce and Consumer Affairs, *Geographic Report*, Honolulu, October 9, 1985.

Regardless of the reason for the low number of complaints against salespersons, it is unlikely that deregulation of salespersons will result in any significant increase in these complaints. Given the free competitive market, it remains in the best interests of the dealer to hire competent and qualified salespersons, to supervise these salespersons, and to resolve any consumer problems and disputes involving salespersons expeditiously and satisfactorily.

Other licenses. Motor vehicle manufacturers, factory branches and representatives, distributors, distributor branches and representatives, and auctions and auctioneers became subject to licensure in 1969. According to the House committee report, the purpose of Act 263, SLH 1969, was to expand "the scope and jurisdiction of the Hawaii law dealing with the motor vehicle dealers licensing board. . . . The objective of state licensing automobile manufacturers and their field representatives is to change a situation of unbalanced power existing between them and their dealers. . . ."16

The House committee report on Act 263 continues: "The manufacturer can afford to replace any particular dealer since no individual is essential to its success. Moreover, it has favors to grant and withhold. Dealers need allocations of the best-selling models and they need factory cooperation in a number of other ways. The dealer, on the other hand, can seldom afford to lose his franchise. . . . Moreover, it is very much to his advantage to stay in favor with the manufacturer's representatives who deal with him since he needs their cooperation."17

It appears that state intervention in the dealer-manufacturer relationship was justified on the grounds that manufacturers hold an unfair and superior economic

16. House Standing Committee Report No. 588 on House Bill No. 477, Regular Session of 1969.

17. *Ibid.*

position in this relationship. The intent was to protect dealers. We do not believe that special statutory protection is warranted for dealers who enter freely into these franchise agreements.

Dealers are not coerced into becoming franchisees. Motor vehicle dealers have the capability and resources to advocate for their own interests. The board is not protecting the interests of an uneducated, ignorant, or unsophisticated group of individuals. These dealers are successful businessmen with ready access to attorneys and others who have the expertise to determine whether a manufacturer's franchise agreement should be accepted or rejected.

Dealers may argue that deregulation would open the door for profit-hungry manufacturers and their representatives to implement abusive business practices that could seriously jeopardize the availability of motor vehicles, parts, and services and thereby threaten the interests and welfare of the State. These fears are ungrounded as it remains in the best interests of the manufacturer to ensure a smooth operating and mutually beneficial dealer-manufacturer franchise system. Manufacturers want to sell as many vehicles as possible. They also want a large profit margin. This cannot be achieved if they have disgruntled dealers or troubled and failing dealerships.

Motor vehicle dealers are already protected against any unfair or abusive manufacturer practices under existing federal statutes. Additional state protection may be both duplicative and costly. The Dealers Day in Court Act, later amended as the Automobile Dealers Franchise Act (ADFA), provides adequate safeguards for dealers. The basic intent of the ADFA is to protect dealers from any unfair, capricious, or arbitrary action on the part of the manufacturers.

This federal law, for example, allows a dealer to file an action in Federal District Court and seek a temporary injunction to prevent a manufacturer from

unfairly terminating a dealership until a hearing on the case can be held to determine whether the manufacturer acted in good faith. The dealer may recover damages if the manufacturer is found not to have acted in good faith.

There is currently a total of 1,282 motor vehicle industry licensees. Of this total, only 78 of the licensees are manufacturers, factory branches or representatives, distributors, or distributor branches or representatives. The detailed breakdown of these 78 licenses is as follows: manufacturers, 8; factory branches, 4; factory representatives, 13; distributors, 22; distributor branches, 1; and distributor representatives, 30.¹⁸

Our examination of RICO complaint cases indicates that in the past three years only 9 of nearly 600 complaint cases were filed by consumers against either manufacturers or their various field representatives. This may be due, in part, to the fact that these licensees conduct most of their business with dealers and other industry personnel, and their primary work does not involve direct retail sales to consumers.

It is interesting to note that we were unable to identify any cases in which a motor vehicle dealer filed a complaint against an automobile manufacturer or a field representative.

We noted in the preceding section that in 1983, there were 31 complaints filed with RICO against a combined used motor vehicle dealer/motor vehicle auction. While in the light of that case, it would be prudent to continue to license auctions, it would not be necessary to license motor vehicle *auctioneers* who, like motor vehicle salespersons, function merely as employees or agents of the dealer.

18. Hawaii, *Geographic Report*.

Summary. We see no compelling reason for the State to continue licensing motor vehicle salespersons, manufacturers, factory branches and representatives, distributors, distributor branches and representatives, and auctioneers. Eliminating licensure requirements for these individuals should pose no threat to the public and should not adversely affect the existing dealer-manufacturer franchise system in Hawaii.

Deregulation is warranted on the following grounds:

- . Licensing of motor vehicle salespersons is unnecessary as they are employed by licensed motor vehicle dealers who are accountable for the business conduct and activities of their employees.
- . In the last three years, very few complaint cases have been filed against motor vehicle salespersons with RICO.
- . Manufacturers need not be regulated as motor vehicle dealers are already afforded adequate safeguards through existing federal laws.
- . Free market principles dictate that manufacturers have little to gain if their dealerships are troubled and failing. It remains in their best interests to ensure a problem-free franchise system.
- . Very few complaint cases have been filed with RICO against these licensees. They conduct most of their business with other industry personnel who have the expertise and resources to ensure their interests are protected.

Regulatory Operations

Our evaluation of the board's regulatory practices indicates that improvements could be achieved by implementing changes in several key areas. This portion of the report will focus on regulatory operations in the following areas: (1) licensing, (2) practice restrictions, and (3) enforcement.

Licensing

Discrepancies in licensing requirements. The board should adopt rules to specify those requirements that an applicant for a motor vehicle dealers license must meet. There currently exists some discrepancy between the license requirements contained in Chapter 437 and those requirements which, in practice, licensure applicants are required to meet. To avoid any possible misunderstanding, confusion, or controversy, these licensing requirements should be clearly delineated in the board's rules.

For example, under Chapter 437, an applicant for a new motor vehicle dealers license must: (1) pay applicable application/license fees; (2) provide certified financial statements; (3) undergo a background investigation/report; (4) undergo a board interview; (5) possess a site with a permanent building suitable for displaying at least three motor vehicles and with appropriate sanitation facilities; (6) undergo a thorough inspection of the proposed business premises; and (7) provide the required bond.

We find, however, that the license application form for motor vehicle dealers contains several requirements which are not specifically listed in Chapter 437 or the board rules. For example, the applicant is required to provide confirmation that a line of credit of at least \$50,000 has been secured from a bona fide financial institution. Additionally, the applicant must provide a tenancy or lease agreement including certification from the landlord that the property is either being rented or leased and is located in a business zone. Finally, an applicant must provide evidence that a repair facility will be available at the dealership.

Police report. Under existing board rules, applicants for licensure must provide a background police report "covering the last five years for an individual, each partner of a partnership; and, for a corporation, each officer of the division

involved in the manufacture and/or distribution of motor vehicles, and each principal officer (president, vice-president, secretary, and treasurer) of the corporation itself. . . ."¹⁹

In the last few years, the board has not enforced this requirement because of its questionable constitutionality. The constitutionality of this requirement should be clarified. If the requirement is, in fact, unconstitutional or if the board chooses to continue not to enforce the requirement, it should be eliminated from the rules.

Bonding. Under Chapter 437, all applicants for licensure must meet certain bonding requirements. The required bond amounts vary for each of the different types of licenses. Act 102, SLH 1985, significantly increased the amount of these bonds. For example, the required bond for new motor vehicle dealers was raised from \$25,000 to \$200,000. The bond amount for used motor vehicle dealers was increased from \$10,000 to \$100,000. Recently, several motor vehicle dealers have expressed concern regarding their ability to meet this recently mandated bond increase.

The law provides that under certain conditions the required bond amount for motor vehicle dealers can be reduced. Under Chapter 437, if the market value of a dealer's business establishment is equal to or greater than 90 percent of the dealer's required bond and the dealer's financial condition is sound, the board may at its discretion reduce the amount of the dealer's bond.

This provision in the law has not been used in recent years because of the relatively low bond amounts previously required of licensees. However, with the recent significant increase in bond amounts for both new and used motor vehicle

19. Section 16-86-6, Hawaii Administrative Rules.

dealers, it is likely that some dealers will seek board approval to reduce the amounts of their bonds.

Our concern involves the board's current lack of written guidelines and procedures necessary to implement this provision in the law. If dealers do, in fact, initiate action to obtain approval from the board for a reduction in their bond amounts, it is important that the board has readily available clear, equitable, and uniform procedures and guidelines which can be used to make fair and reasonable decisions in this area.

Practice restrictions. *County exemptions.* Currently, a licensee cannot do business outside the county for which the license was issued. Chapter 437 mandates that a license issued by the board "shall authorize the holder to engage in the business or activities permitted by the licensee, only in the county for which the license is issued."²⁰ Consequently, the law prohibits a licensed dealer from operating a branch location in another county. Additionally, a dealer cannot even advertise outside the dealer's home county.

Regulatory requirements should be directed at ensuring safe, competent, and scrupulous practices of an occupation and should not have the effect of reducing competition by restricting access to occupations or by prohibiting certain competitive practices such as price advertising. Restraints on advertising imposed by licensing boards present the clearest example of unnecessary restrictions of licensed persons or businesses.

Along these lines, a report by the Council of State Governments on occupational licensing states: "The purpose of regulation is to protect the public, not the economic interest of the occupational group. Boards sometimes make

20. Section 437-2, HRS.

decisions that serve the economic interests of the occupational group rather than those of the public."²¹

The single county requirement is unreasonable, anticompetitive in nature, and unnecessarily restrictive. It should be eliminated.

Salespersons. Motor vehicle salespersons must be full-time employees and must work for only one motor vehicle dealer. The board has the authority to deny the issuance or renewal of a license or suspend or revoke a license if the person does not "intend to be employed as a salesman as his principal occupation; or intends to be employed as a salesman for more than one dealer. . . ." ²²

There is little justification for these restrictions. These two requirements are unreasonable and unnecessarily interfere with the employment activities of motor vehicle salespersons and the preferences and needs of employers. Both requirements should be eliminated.

Motor vehicle brokers. Current prohibitions against sales by brokers are not in the interests of consumers but serve to protect dealers from competition. Unlike dealers, motor vehicle brokers are not franchised, maintain no showrooms or inventory, and have no repair, parts, or service facilities. Working out of business offices, these brokers operate by helping consumers select new vehicles from catalogs. The vehicles are then ordered through central clearinghouses on the mainland which locate these models from car dealerships. The vehicles are then shipped to Hawaii for purchase by the consumer. Because of low operating costs, these new cars can often be sold at a price lower than that offered by a dealer.

21. The Council of State Governments, *Occupational Licensing: Questions a Legislator Should Ask*, Lexington, Ky., 1978, p. 11.

22. Section 437-28, HRS.

Prior to 1961, motor vehicle brokers were licensed by the State and could legally sell new motor vehicles. However, Act 59, SLH 1961, amended the law by eliminating licensing for brokers and prohibiting brokers from selling new cars. This was accomplished by requiring that new motor vehicles could only be sold by licensed motor vehicle dealers who were franchised, owned a permanent business site with a showroom, and had available a parts and service facility. Brokers, of course, could not meet these conditions.

In its committee report recommending the curtailing of sales by brokers, the House Committee on Small Business and Trade and Commerce stated: "The present law provides that new cars can be sold by authorized and franchised new car dealers and by brokers. This law is not fair to the dealers. . . . The dealers must have a place of business used solely and sufficiently large enough for the display and sale of automobiles. . . . The broker, on the other hand, need only maintain a place of business where he conducts the major portion of business."²³ Act 59 grandfathered into the law all existing licensed brokers. Today, there remains one licensed motor vehicle broker in the State.

In 1979, the controversy over whether brokers should be allowed to sell new cars and compete directly with dealers gained renewed interest. That year, the State Office of Consumer Protection filed a lawsuit against an unlicensed broker accused of failing to deliver or delivering the wrong vehicles contracted for. At the same time, the head of the Antitrust Division of the Department of the Attorney General expressed interest in the case "because of the anticompetitive aspect of the laws and licensing procedures."²⁴

23. House Standing Committee Report No. 457 on House Bill No. 1266, Regular Session of 1961.

24. "Suit May Hit Islands' Auto Sales Industry," *Honolulu Star-Bulletin*, August 22, 1979.

That year, the Antitrust Division provided testimony on this issue to the Legislature. In its testimony, the Antitrust Division stated: "Such considerations of 'fairness' under which brokers are prevented from engaging in this line of commerce, raise questions of who is benefiting from this licensing scheme. Clearly, franchised car dealers benefit from the lack of competition from brokers. What is not at all clear is the benefit to the larger public of a regulatory scheme which in effect forecloses a less expensive source (brokers) of new cars. More importantly, we believe this prohibition on brokers is a restraint of trade in violation of Section 1 of the Sherman Act. . . ."25

Also in 1979, the State Ethics Commission released a critical report which characterized the Motor Vehicle Industry Licensing Board as working for the benefit of the industry rather than consumers. The report touched upon the broker issue and stated: "The Hawaii Automobile Dealers Association makes regular complaints to the board with regard to industry members and specifically with regard to those brokers who are still licensed in Hawaii. . . . The statute does not presently permit the acquisition of a broker's license. The staff understood from good authority that at the time the State took over this regulatory function the HADA drafted a statute and presented it in bill form; this organization did not want to allow any new brokers. The statute today, for the most part, reflects that draft."26

Those who support motor vehicle brokers argue that consumers who are forced to purchase new vehicles through franchised dealers end up paying more than they

25. Testimony on Senate Bill No. 691 submitted by the Department of the Attorney General, Antitrust Division, to the Committee on Consumer Protection and Commerce, March 27, 1979.

26. Hawaii, State Ethics Commission, *State Ethics Commission Report on the Professional and Vocational Licensing Boards in the Department of Regulatory Agencies*, Honolulu, 1979, p. 19.

have to because consumers must assume part of the dealer's overhead costs such as the required showroom, inventory of car models, and parts and service/repair facilities.

Motor vehicle dealers dispute these claims and continue to argue that brokers represent unfair competition because they need not maintain the costly operations and services required of car dealers. These dealers also question the significance of the savings purportedly gained by purchasing a vehicle through a broker. They say that the current laws are necessary to protect consumers from unethical and unscrupulous brokers. Dealers are concerned about situations in which consumers pay their money for a car but find that the broker, without any close ties or long-term investment with the community, has fled the State. Dealers caution that these kinds of cases have already occurred in Hawaii.

We believe that current restrictions prohibiting motor vehicle brokers from selling new motor vehicles are unreasonable and anticompetitive in nature. The requirements that a dealer must have a site for displaying vehicles offered for sale, with a permanent building suitable for displaying at least three motor vehicles, and with suitable sanitation facilities serve no consumer protection purpose. These restrictions work contrary to free market principles, may be artificially inflating the cost of purchasing new vehicles, and deprive consumers of an opportunity to pursue alternate and possibly less costly means of purchasing motor vehicles.

Although brokers, who are involved in direct retail sales with the public, may pose some risk to public welfare, adequate safeguards for consumers can be developed and implemented through the law. One alternative, for example, would be to require brokers to maintain the same bond amount as for new motor vehicle dealers (\$200,000).

Car rental companies/fleet subsidies. Allowing car rental companies which are not licensed to sell used motor vehicles directly to the public and the practice of manufacturers to give "subsidies" to fleet purchasers remain a major source of controversy within the industry.

Chapter 437 requires all persons engaged in the business of purchasing and selling motor vehicles in the State to be licensed under Chapter 437. Excluded from this licensing requirement, however, are public officers performing their official duties; receivers and trustees acting under a judgment or court order; insurance companies, banks, and other financial institutions selling repossessed vehicles; and persons "not engaged in the business of selling or purchasing motor vehicles when acquiring or disposing of motor vehicles for their own personal, family, or business use. . . ." ²⁷

Under this last provision, car rental companies traditionally have been allowed to dispose of their excess or outdated vehicles by selling them directly to the public. Such sales represent a secondary, yet increasingly lucrative, aspect of the car rental industry. The industry reportedly sells hundreds of millions of dollars worth of used cars annually. According to some industry reports, fleet sales average close to two million vehicles per year. ²⁸ Hertz Corporation, the largest single buyer of Detroit cars in the world, is already the largest used car seller in the nation.

Most car rental companies offer similar sales packages. The cars are usually a year old, have been rented about 90 times, and driven between 12,000 and 21,000 miles. Cars with frame damage, suspect engines, or needing more than \$750 in repairs are usually sold to wholesalers. Each car has its own service, rental, and

27. Section 437-1.1, HRS.

28. "U.S. Automaker, Dealers Fight Over Fleet Sales," *Washington Post*, January 5, 1984.

accident documentation which can be inspected by buyers. Hertz generally provides a 12 month/12,000 mile drivetrain warranty including parts and labor, something used car dealers do not routinely offer. Because of high volume sales, Hertz, for example, can usually sell a car \$200 to \$500 below the Blue Book value.

Understandably, both franchised motor vehicle dealers and independent used car dealers have become increasingly concerned about this new trend. Their concerns are primarily twofold. First, the dealers believe the car rental companies are circumventing both the spirit and intent of the law. They contend that it is unfair for these rental companies to sell cars directly to the public without having to meet the licensing and operating requirements. They assert that if the intent of the law is to protect the consumer, the law should apply across the board and include car rental companies.

Their second point of contention has little to do with protecting consumers. Instead, it concerns the longstanding practice of manufacturers giving discounts or "subsidies" to fleet purchasers, including car rental companies, who purchase 10 or more vehicles annually. Franchised motor vehicle dealers do not receive the same discounts.

According to the National Automobile Dealers Association (NADA), these fleet subsidies threaten the basic stability of the existing dealer-manufacturer franchise system and are unfair to dealers. Additionally, they assert that these subsidies hurt consumers by resulting in artificial pricing and forcing consumers to purchase high cost vehicles through nonsubsidized dealers. In effect, the consumers are subsidizing the discounts given by manufacturers to fleet purchasers. The extra cost to consumers, according to NADA, can run as high as \$1,000 per car.

Car rental officials deny both charges. They assert that licensing is not really necessary since these rental companies do not sell cars as their main line of business

but only to dispose of their excess inventory. They argue that only some portion of their cars are sold directly to the public. Many cars are still disposed of through wholesalers and at auctions where buyers are usually sophisticated dealers or other industry persons. They also claim that there is no documented evidence that consumers have ever suffered economic harm from fleet incentives.

Although nationwide there appears to be increased state legislative interest in these areas, as far as we can determine, there are currently no states that require car rental companies to be licensed to dispose of their excess motor vehicles through direct retail sales to the public. Additionally, it appears that only one state has laws specifically tailored to prohibit manufacturers from providing incentives to fleet purchasers.

Given the absence of any documented consumer harm, we see no compelling reason for the State to prohibit sales by car rental companies.

Enforcement

Prior to 1982, the board's enforcement function consisted of enforcing the statutory provisions contained in Chapter 437 and the rules of the board and investigating and resolving complaints. It was hoped that enforcing the statutes and rules would help to ensure that the public and industry members would be protected from unfair and abusive practices. Complaint procedures would provide the public and licensees with a mechanism to ensure that complaints involving alleged violations of the law would be investigated and resolved equitably and in a timely manner.

In 1982, Act 204 removed the complaints/investigatory function from the board (and all other boards and commissions within DCCA) and placed this function in the newly created Regulated Industries Complaints Office. Act 204, SLH 1982,

mandated that "all boards and commissions . . . shall delegate their authority to receive, arbitrate, investigate, and prosecute complaints to the department."²⁹

Prior to this change in the law, the board had been criticized on several occasions for being biased in its complaints handling and overly protective of industry licensees. The board's apparent lack of responsiveness toward consumer complaints, in part, led the State Ethics Commission to conclude in a 1979 report that "the activities of the board and the law which is administered were more for the benefit of the industry than the consumer."³⁰

In 1982, the Legislative Auditor released an evaluation of the vocational and licensing program of the Department of Regulatory Agencies which found that: "The Motor Vehicle Industry (dealers) Licensing Board, was found to be inclined to favor the industry's position. The board tended to refrain from proceeding to a hearing for administrative disciplinary action against licensees."³¹

These shortcomings appear to have been resolved. The transfer of authority for complaints from the board to RICO has resulted in noticeable improvements in the complaints investigation and resolution process. Since RICO is now solely responsible for receiving complaints, determining which cases are to be investigated and resolved, and recommending which cases should be referred for administrative disciplinary action, questions about the board's bias have diminished.

29. Section 1, Act 204, SLH 1982.

30. Hawaii, *State Ethics Commission Report*.

31. Hawaii, Legislative Auditor, *Evaluation of the Professional and Vocational Licensing Program of the Department of Regulatory Agencies*, Honolulu, Report No. 82-1, January 1982, p. 49.

Currently, the board has no access to the complaints that are filed with RICO, no say in how the cases are investigated, and no authority to dictate which cases will be routed to RICO's legal staff for possible hearings and disciplinary action. Although there continues to be a high number of complaints filed against industry licensees, the previously large backlog of cases has been eliminated, and complaint cases are being handled in a reasonably timely manner.

Finally, as previously mentioned, Act 204, SLH 1982, mandated that the board delegate its authority to receive and investigate complaints to RICO. However, Chapter 437 still contains statutory language authorizing the board to investigate complaints.

Section 437-6, HRS, for example, mandates that "the board shall have the sole jurisdiction, power, and authority . . . to . . . investigate violations through its investigators or inspections or otherwise, and to report such violations to the prosecuting officer for prosecution. . . ." ³² Additionally, Section 437-28, HRS, states: "The board shall upon the verified written complaint of any person or may upon its own motion investigate the conduct of any licensee. . . ." ³³

To avoid any misunderstanding or confusion and to prevent any possible legal challenges, Section 437-6, HRS, Section 437-28, HRS, and any other relevant sections in Chapter 437 should be amended to reflect the mandates of Act 204, SLH 1982.

32. Section 437-6, HRS.

33. Section 437-28, HRS.

Recommendations

We recommend that:

1. Chapter 437, Hawaii Revised Statutes, be reenacted to allow for the continued regulation of motor vehicle dealers and auctions. In reenacting the chapter, consideration be given to the following changes:

- . deleting the requirement that prohibits a licensee from doing business outside the county for which the license was issued;*
- . deleting those provisions that require motor vehicle salespersons to be employed full time and work for only one motor vehicle dealer;*
- . allowing motor vehicle brokers to sell new motor vehicles and deleting requirements relating to a site and building for display of motor vehicles and suitable sanitation facilities;*
- . deleting licensing for motor vehicle salespersons, auctioneers, manufacturers, factory branches and representatives, distributors, and distributor branches and representatives; and*
- . amending the chapter to reflect the mandates of Act 204, SLH 1982, which removed the board's authority to receive and investigate complaints and delegated this authority to the Regulated Industries Complaints Office.*

2. The board's rules be amended by:

- . clarifying the licensing requirements for motor vehicle dealers and specifically adopting these requirements in its rules;*
- . deleting the requirement that an applicant for licensure provide a background police report; and*
- . including clear guidelines, procedures, and requirements which can be used by the board to determine in an equitable and uniform manner whether a motor vehicle dealer's required bond amount can be reduced.*

APPENDIX

RESPONSES OF AFFECTED AGENCIES

COMMENTS ON AGENCY RESPONSES

A preliminary draft of this Sunset Evaluation Report was transmitted on December 12, 1985 to the Motor Vehicle Industry Licensing Board and the Department of Commerce and Consumer Affairs for their review and comments. A copy of the transmittal letter to the board is included as Attachment 1 of this Appendix. A similar letter was sent to the department. The responses from the board and the department are included as Attachments 2 and 3.

The board is in general agreement with our recommendations except for the recommendations to delete: (1) requirements relating to the dealer's site and building, and (2) prohibiting licensees from operating outside the county for which the license was issued. The board is concerned that this would result in "unfettered competition." In addition to our recommendations, the board feels that other changes are needed, including the regulation of sales by car rental agencies, a bond of \$100,000 for all dealers regardless of the number of units sold, and the availability of repair facilities for customers. Our evaluation of the program indicates that these additional changes are not necessary.

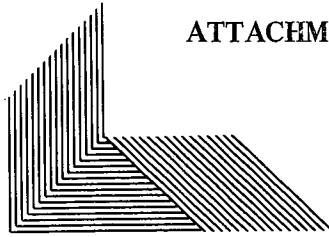
The Department of Commerce and Consumer Affairs is in general agreement with our evaluation of the program. It does have reservations about deleting the licensing of salespersons. The department points to the need to discipline salespersons and to hold that person accountable for improper or unscrupulous behavior. However, as we pointed out in the report, very few complaints are directed against salespersons. Instead, consumers target the dealership and hold the

dealership responsible. Licensing salespersons is unnecessary and inefficient and may provide a loophole which allows dealers to shirk their responsibility to supervise their employees properly.

The department also points to the loss of revenue to the compliance resolution fund should salespersons not be licensed and that these costs will have to be assumed by dealers. This concern is irrelevant to the question of whether salespersons should be licensed.

ATTACHMENT 1

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
465 S. KING STREET, RM. 500
HONOLULU, HAWAII 96813



CLINTON T. TANIMURA
AUDITOR

December 12, 1985

COPY

Mr. Dwane P. Brenneman, Chairperson
Motor Vehicle Industry Licensing Board
Department of Commerce and Consumer Affairs
State of Hawaii
Honolulu, Hawaii 96813

Dear Mr. Brenneman:

Enclosed are eight preliminary copies, numbered 4 through 11, of our *Sunset Evaluation Report, Motor Vehicle Industry Licensing, Chapter 437, Hawaii Revised Statutes*. These copies are for review by you, other members of the board, and your executive secretary. This preliminary report has also been transmitted to Russel Nagata, Director, Department of Commerce and Consumer Affairs.

The report contains our recommendations relating to the regulation of motor vehicle sales. If you have any comments on our recommendations, we would appreciate receiving them by January 13, 1986. Any comments we receive will be included as part of the final report which will be submitted to the Legislature.

Since the report is not in final form and changes may possibly be made to it, we request that you limit access to the report to those officials whom you wish to call upon for assistance in your response. Please do not reproduce the report. Should you require additional copies, please contact our office. Public release of the report will be made solely by our office and only after the report is published in its final form.

We appreciate the assistance and cooperation extended to us.

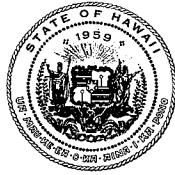
Sincerely,

Clinton T. Tanimura
Legislative Auditor

Enclosures

ATTACHMENT 2

GEORGE R. ARIYOSHI
GOVERNOR



RUSSEL S. NAGATA
DIRECTOR

NOE NOE TOM
LICENSING ADMINISTRATOR

MOTOR VEHICLE INDUSTRY LICENSING BOARD
STATE OF HAWAII
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P. O. BOX 3469
HONOLULU, HAWAII 96801

RECEIVED

January 9, 1986

JAN 10 2 41 PM '86

OFF. OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura
Legislative Auditor
Office of the Auditor
465 South King Street, Suite 500
Honolulu, Hawaii 96813

Dear Mr. Tanimura,

Having studied your report regarding the Sunset Evaluation of Motor Vehicle Industry Licensing, Chapter 437 HRS, the Board finds that it is in general agreement with the recommended reenactment and recommended changes, with the following exceptions:

1. Requirements relating to business site and minimum requirements should be maintained. This provides for reasonable stability and commitment from the licensee.
2. The unfettered competition envisioned in the recommendations to allow licensees to operate outside of their county and in expanding the operations of brokers without facilities requirements may provide short term de minimus savings to consumers in the purchase price paid for vehicles. In the long term, however, these recommendations could cause more serious injury to consumers as they would tend to eliminate the availability of service facilities available to them.

While you have covered most of the significant areas of changes needed in Chapter 437 HRS, we feel there are five (5) additional provisions that should be addressed:

Mr. Clinton T. Tanimura
January 9, 1986
Page 2

1. Daily rental sales should be licensed under Chapter 437 HRS for the same factors as stated in your "Summary", (page 3-13), regarding Licensing of Motor Vehicle Dealers. At the moment, the factor, "Very Poor Track Record" regarding complaints is not significant, however, the safety and welfare of the consuming public of regulated business should be consistent.
2. Should the legislature find that "the single county requirement is unreasonable, anti-competitive in nature and unnecessarily restrictive" -- so is sections 437-4 HRS, 437-7 HRS, 437-15 HRS, which prohibits sales from other than licensed location. These three sections should be changed for consistency.
3. Bonding requirement of the used car dealer should be \$100,000 and not split by number of units sold or any other means of segmenting the amount of bond. Risk is risk and not necessarily smaller by number of units sold.
4. The greatest consumer injury that could occur in the automobile industry would be for the consumer to lose the ability to have his car repaired. This applies both during the warranty period for the car and after the warranty has expired. The increasing technical complication of motor vehicles renders them undiagnosable and unfixable without expensive sophisticated equipment and trained technicians. To encourage actions through the licensing procedure which tend to weaken the ability of the franchised dealer to make a fair return on its investment, threatens the most ultimate injury to the consumer. A modicum of protection for the industry cannot be separated from protection of the consumer. Any de minimus savings that might accrue to consumers through

Mr. Clinton T. Tanimura
January 9, 1986
Page 3

the recommendations of Sunset Evaluation Report, would truly wane in comparison to the injury the consumer would suffer should severe harm come to the industry.

5. The Board has submitted legislation which is part of the Administration packet to carry out the provision of Act 204

Very truly yours,

Robert L. Shepard
Exec. Sec.

for Dwane P. Brenneman, Chairman
Motor Vehicle Industry Licensing
Board

ATTACHMENT 3



GEORGE R. ARIYOSHI
GOVERNOR

RUSSEL S. NAGATA
Director

COMMISSIONER OF SECURITIES

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

ROBERT A. ALM
DEPUTY DIRECTOR

January 13, 1986

RECEIVED

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OFF. OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura
Legislative Auditor
Office of the Auditor
465 S. King Street, Suite 500
Honolulu, HI 96813

Dear Mr. Tanimura:

Thank you for the opportunity to comment on your
"Sunset Evaluation Report Motor Vehicle Industry Licensing".

The Department of Commerce and Consumer Affairs is in
general agreement with the observations and evaluation you
have made of the motor vehicle industry.

At this time we wish to share our concern with the
following recommendation stated in your report:

"Delete licensing for motor vehicle salespersons,
auctioneers, manufacturers, factory branches and
representative, distributors, and distributor
branches and representatives".

We have strong reservations about the suggestion to
delete licensing of salespersons. Salespersons are
the individuals which have the highest direct contact
with the public. Through them consumers are informed
of the product, its features, and warranty
provisions. Consumers rely on the accuracy and
truthfulness of representations made by a salesperson
when deciding to purchase the product. Salespersons
can cause serious harm to consumers should they not
be totally accurate or truthful. Seeking action
against the dealer for improper conduct by its
salespeople is one avenue to pursue; however, action
against the individual should not be ignored. If
nothing is in place to allow the department to
administratively pursue and discipline a salesperson

Mr. Clinton T. Tanimura
Page 2
January 13, 1986

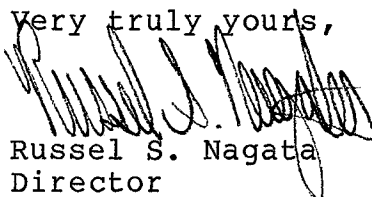
for improper or unscrupulous behavior the individual can easily move from one dealer to another and continue to expose the consumer to harm. To adequately protect the consumer we believe that the dealer and the salesperson should be held accountable for their actions.

In the event serious consideration is given to deleting licensure of salespersons, we feel it necessary to point out the responsibility which would befall the licensed dealer in assuming costs for complaint resolution for their industry. In 1984, a study was conducted by the department to show the relationship of compliance resolution fund (CRF) fees of licensed categories to services rendered in handling consumer complaints. The study showed that for 1984, the cost for services to the motor vehicle license category was \$29.18 per licensee, or an overall cost of \$34,432.40 for the handling of consumer complaints related to the motor vehicle industry.

Currently there are a total of 1,283 licensees in the motor vehicle license category (1,159 salespersons and 124 dealers) which share in paying \$20 each per year into the CRF in order to cover the costs for complaint handling. Assuming that salespersons would not be licensed and using the 1984 total cost figure assessed the motor vehicle industry for handling complaints, it would mean that the 124 licensed dealers would have to assume the cost of approximately \$280 per year to the CRF, in the absence of fees paid by licensed salespersons. The department must be prepared to pursue adjustment of the CRF fees for dealers should salespersons no longer be licensed.

We feel that a thoughtful and thorough assessment was made of the motor vehicle industry and commend your staff for this.

Very truly yours,


Russel S. Nagata
Director